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I am the Managing Editor of the defendant corporation and I make this affidavit in opposition to plaintiff's motion for summary judgment.

This affidavit is based in part on my personal knowledge and in part upon information gathered from the records and files of Click, Inc., the defendant corporation, and the files of Triangle Publications Inc., the parent corporation of Click, Inc.,

That your deponent has read the moving affidavits herein and denies that there is anything due to the plaintiff or to her assignor, Harold Weissberg. By reason of the information which will hereinafter be set forth, your deponent verily believes that there never was any agreement between Harold Weissberg, plaintiff's assignor and H. Hebert Rogers, the former president and editor of Click, for the payment by the defendant of $10.00 per day for work that was never accepted. Your deponent believes that the allegations contained in Mr. Rogers moving affidavit are collusive. The facts upon which this belief is based are as follows:

On or about January 27, 1942, Mr. Rogers was discharged from his position with Click. On January 29, 1942, Mr. Rogers was sent a check for $2252.25 and a general release to be signed by him. The check was cashed but the general release was not returned. Generally, this transaction was attended with much recrimination as appears more fully from the annexed letter of Mr. Rogers dated February 13, 1942, marked Exhibit "A".

At the time of Mr. Roger's discharge there was a substantial change in policy and personnel of the defendant which necessitated the discharge of several of Mr. Roger's very close friends, including plaintiff's assignor, Harold Weissberg. At that time, it was understood that there were no outstanding claims against Click by reason of unpaid salary or wages to any of Mr. Rogers' friends. Mr. Rogers gave us to understand that the $225252 he received would be the end of trouble from him and his friends.

Shortly after Mr. Rogers' discharge, on or about February 9, 1942, plaintiff's assignor, Harold Weissberg called at the New York office of Click and presented to me bills for $770.00 representing fees for unused and rejected articles. There was

nothing in the records of the defendant corroborating Mr. Weissberg's claim. It was based solely upon an oral agreement with Mr. Rogers, a person who then and now is decidedly unfriendly to the defendant. On the other hand, your deponent was new on the job and had no special reason for doubting Mr. Weissberg's story. Accordingly your deponent tentatively agreed to approve payment of $970.00 as full settlement, but I advised Mr. Weissberg that in view of all the circumstances, I would pass the matter on to the main office with my recommendation.

The matter was duly referred to Joseph First, Esq., vice president of Triangle Publications who after examining the account of Mr. Weissberg noted several suspicious facts, i. e. that Mr. Weissberg was presenting a bill for approximately $1000.00 in one month when all his bills for the entire preceding year totaled less than $2500.00; that the sum of $300 for obtaining a transcript of testimony before a Congressional committee was unreasonable since a $15.00 per week messenger boy could have done the same thing in one afternoon.

Accordingly Mr. First wrote to Mr. Weissberg on March 2, 1942, asking him to explain this account more fully. A copy of said letter is annexed hereto marked Exhibit "B".

In the meantime Mr. Weissberg dug up more ancient and forgotten items swelling the alleged bill to $1226.09, in which there was included padded expense items of $81.09 for time and expenses in calling at Click's office to settle up his alleged bill on and after February 9, 1942.

Your deponent verily believes that the alleged agreement between Mr. Rogers and Mr. Weissberg is collusive; that there never was any such agreement, and that nothing is due to Mr. Weissberg or to his assignee. Your deponent has fully informed Reuben H. Gross, Esq., attorney for the defendant of those facts, and he advises and your deponent truly believes that there is a good, substantial and meritorious defense to this action, and that the defendant should not be deprived of its opportunity of cross-examining Messrs. Rogers and Weissberg upon the trial of this action merely because they have alleged an agreement at a time and place which does not admit of categorial contradiction.

Your deponent further alleges that there never has been any demand for payment by the plaintiff in this action, Lucille Tormese. That your deponent does not know whether or not this claim has actually been assigned in whole or in part or whether the allegation contained in paragraph "1" of Mr. Weissberg's affidavit is merely his conclusion, as the defendant never received a copy of the alleged assignment.

WHEREFORE your deponent prays that plaintiff's motion be denied.

(signed) John H. Whiting

Sworn to before me this 24th day of June, 1942.
(signed) Herman Tolowitz
Notary Public, Kings Co., Cert. filed N. Y. Co. #44. Comm. exp. 3/30/44